

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NewAge, Inc., *et al.*,¹

Debtors.

NewAge, Inc., et al.

Plaintiff,

V.

Frederick Cooper, Mark Wilson, Brent Willis,
and KWIKClick, Inc. a Delaware corporation,

Defendants.

Chapter 11

Case No. 22-10819 (LSS)

Jointly Administered

Adv. Pro. No. 22-50432 (LSS)

Hearing Date: December 21, 2022, at 10:00 a.m. (ET)
Objection Deadline: December 14, 2022, at 4:00 p.m. (ET)

**MOTION OF KIRKLAND & ELLIS LLP AND KIRKLAND & ELLIS
INTERNATIONAL LLP AND PACHULSKI STANG ZIEHL & JONES LLP TO
WITHDRAW AS COUNSEL FOR DR. FREDERICK W. COOPER**

Kirkland & Ellis LLP and Kirkland & Ellis International LLP (together, “K&E”) and Pachulski Stang Ziehl & Jones LLP (“PSZJ”, and together with K&E, the “Firms”), by this motion (the “Motion”), seek entry of an order, substantially in the form attached hereto as **Exhibit A**, permitting the Firms to withdraw as counsel to Dr. Frederick W. Cooper (“Dr. Cooper”) in the chapter 11 cases of the above-captioned debtors (collectively, the “Debtors”) and, out of abundance of caution, confirming the Firms’ withdrawal of any representation in connection with

¹ The last four (4) digits of each of the Debtors' federal tax identification number are NewAge, Inc., (2263), Ariix, LLC (9011), Morinda Holdings, Inc. (9756), and Morinda, Inc. (9188). The Debtors' address is 7158 S. FLSmidth Dr., Suite 250, Midvale, Utah 84047.

a related adversary proceeding, Adv. Pro. No. 22-50432 (the “Adversary Proceeding”). Dr. Cooper has consented to the withdrawal of the Firms. In support of the Motion, the Firms state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. The Firms confirm their consent pursuant to Rule 9013-1(f) of the Local Rules to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are Rule 9010-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) and Rule 1.16 of the Delaware Lawyers’ Rules of Professional Conduct (the “Rules of Professional Conduct”).

Background

4. On August 30, 2022 (the “Petition Date”), the Debtors commenced these chapter 11 cases by each filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On September 14, 2022, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed five members to the Official Committee of Unsecured Creditors (the “Committee”) in these chapter 11 cases. *See* Docket No. 66. On October 19, 2022, the U.S. Trustee amended the appointment of the Committee to four members. *See* Docket No. 231.

6. On October 6, 2022, the Firms, on behalf of Dr. Cooper, filed the *Objection of Dr. Frederick W. Cooper to the Debtors' Notice of Proposed Assumption and Assignment of Certain Executory Contracts* (the “Objection”) [Docket No. 177].

7. On October 7, 2022, the Debtors filed a complaint in the Adversary Proceeding against Dr. Cooper and other defendants [Adv. Pro. No. 22-50432, Docket No. 1].

8. At the October 11, 2022 hearing to consider approval of the Debtors’ proposed sale of their assets in the main chapter 11 cases, the Firms appeared on behalf of Dr. Cooper with respect to the Objection.

Relief Requested

9. The Firms, by this Motion seek entry of an order, permitting the Firms to withdraw as counsel to Dr. Cooper in the chapter 11 cases of the Debtors and, out of abundance of caution, confirming the Firms’ withdrawal of any representation of Dr. Cooper in connection with the Adversary Proceeding.

Basis for Relief

10. Rule 1.16 of the Rules of Professional Conduct provides, in part:

Rule 1.16(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

...

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

Del. Prof. Cond. 1.16.

11. Local Rule 9010-2(b) provides as follows:

(b) Withdrawal. An attorney may withdraw an appearance for a party without the Court's permission (i) when such withdrawal will leave a member of the Bar of the District Court appearing as attorney of record for the party, *or (ii) when the party (a) has no controversy pending before the Court and (b) the attorney certifies that the party consents to withdrawal of counsel. Otherwise, no appearance shall be withdrawn except by order on a motion duly filed,* served on each party and served on the party client by registered or certified mail addressed to the client's last known address, at least fourteen (14) days before the motion is heard by the Court. The filer is not required to confer other than with its party client prior to filing the motion to withdraw.

Del. Bankr. L.R. 9010-2(b) (emphasis added).

12. Dr. Cooper has confirmed his consent to the Firms' withdrawal as his counsel in the main bankruptcy cases and in the Adversary Proceeding.

13. Pursuant to Local Rule 9010-2(b), the Firms hereby seek approval from the Court to withdraw as counsel to Dr. Cooper. Although the Firms have not been retained by Dr. Cooper with respect to the Adversary Proceeding and he has confirmed so, out of abundance of caution, the Firms file this Motion for Court approval of the proposed withdrawal as counsel.

Notice

14. A copy of the Motion has been provided to: (a) Dr. Cooper; (b) counsel to the Debtors; (c) counsel to the Committee; (d) the Office of the United States Trustee for the District

of Delaware, and (e) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Firms respectfully requests that the Court enter the order, substantially in the form attached hereto as **Exhibit A**, authorizing their withdrawal as counsel to Dr. Cooper.

Dated: December 6, 2022
Wilmington, Delaware

/s/ Laura Davis Jones

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